

REMARKS

Status of the claims

Claims 37-40, 42-50, 70 and 71 are pending in the application.

Claims 37-40, 42-50, 70 and 71 stand rejected.

No claims are amendeded. No new matter has been added.

The 35 U.S.C. §103 rejection

Claims 37-40, 42-49 and 71 are rejected under 35 U.S.C. §103 as being unpatentable over **Flomenbilt et al.** (U.S. Patent No. 5,562,641) in view of **Rudie** (U.S. Patent No. 6,032,078) and further in view of **Healy et al.** (U.S. Patent No. 5,670,161). The Applicants respectfully traverse this rejection.

The Examiner states on page 2 of the Office Action that regarding claims 37, 38, 42, 45 and 71, **Flomenbilt et al.** disclose a device for the treatment of tissue, comprising: a radiofrequency power supply; an antenna connected to said radiofrequency power supply; an energy absorbing species. The Examiner also states that **Rudie** discloses a catheter device and teaches providing the catheter with an antenna comprising a flat ribbon wire wound into a helical antenna configuration in order to deliver RF energy. The Examiner further states that **Healy et al.** disclose a treatment system including a biodegradable stent and teach providing the stent with a coating comprising a drug in order to enhance the therapeutic effects. Thus the Examiner concludes at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify

the invention of **Flomenbilt et al.**, as taught by **Rudie**, to provide the catheter with an antenna comprising a flat ribbon wire (electrical conductor) wound into a helical antenna configuration in order to deliver RF energy, and as further taught by **Healy et al.** to provide the stent with a coating comprising a drug in order to enhance the therapeutic effects. Applicants respectfully disagrees.

The Applicants respectfully point out that in order for a claim rejection to be valid, all claim limitations must be considered: "All words in a claim must be considered in judging the patentability of that claim against the prior art (MPEP 2143.03)." The invention as taught by **Flomenbilt et al.** requires that the energy absorbing species, stent (32 in the figures), use various forms of energy to expand into its super-elastic state (Description of Specific Embodiments). This is crucial to the invention since the stent is designed to have a two-way shape as determined by temperature. However, nowhere does **Flomenbilt et al.** teach that the energy absorbing material transduce heat to a substrate. Instead, **Flomenbilt et al.** teach that the stent is to maintain a temperature equivalent to its surroundings (body temperature) after attaining the desired shape.

By distinct contrast, the instant claims recite that the energy absorbing species transduce heat which has been generated to the desired target (instant claim 37). This inductive heating is supported in the specification (instant specification, pg 13, line 28-31)." The Applicants submit that this crucial limitation is not taught by **Flomenbilt et al.** Furthermore, this lack of teaching is not remedied by **Rudie** nor **Healy et al.**, separately or in combination. **Rudie**

does teach heating but by using RF emission to cause molecular excitation of tissue.

In view of the arguments presented herein, the Applicants submit that all claim limitations of the instant invention are not taught or suggested by the prior art references. The Applicants respectfully request that the rejection of claims 37-40, 42-49 and 71 under 35 U.S.C. 103 be withdrawn. The Applicants believe the claims are now in condition for allowance.

Claims 50 and 70 are rejected under 35 U.S.C. 103 as being unpatentable over **Flomenbilt et al.** (USPN 5,562,641) in view of **Rudie** (USPN 6,032,078) and further in view of **Healy et al.** (USPN 5,670,161) as applied to claim 37 above, and still further in view of **Pinchuk et al.** (USPN 6,545,097). The Applicants respectfully traverse this rejection.

Claims 50 and 70 both depend on independent claim 37. The patentability of claim 37 has been discussed in the preceding section. The Applicants submit that in view of the arguments presented supra, claims 50 and 70 now depend on an allowable independent claim.


The Applicants respectfully request that the rejection of claims 50 and 70 under 35 U.S.C. 103 be withdrawn. The Applicants believe that the claims are now in condition for allowance.

This is intended to be a complete response to the Examiner communication mailed March 14, 2008. Applicant encloses a Petition for Three (3)

Months Extension of Time. Please charge the \$555 petition fee under 37 CFR 1.17(a) to the credit card identified on the enclosed Form PTO-2038. Only in the absence of Form PTO-2038, please debit any applicable fees to Deposit Account No. 07-1185, upon which the under signed is allowed to draw. If any issues remain outstanding, please telephone the undersigned attorney of record for immediate resolution.

Respectfully submitted,

Date: 12/31/08


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Archive for Monday, September 15, 2008

Rains, thunderstorms hammer Houston

Power outages caused by Hurricane Ike may last for up to a month, officials warn.

By P J. Huffstutter and David Zucchino
September 15, 2008

Heavy rains and thunderstorms pummeled Houston this morning, hampering rescue efforts along the Gulf Coast and the restoration of full power and water for many residents of the country's fourth-largest city in the aftermath of Hurricane Ike.

Officials with local utility companies warned residents that it may be as long as a month before power has been restored across the Houston area and harder-hit communities to the south like Galveston. Crews must hack their way through downed trees and flooded and debris-clogged roadways in their efforts to repair power lines.

As many as 5 million people in southeast Texas and southwest Louisiana are without electricity, according to state and local officials.

The wide power outages, in addition to several main arteries through Houston now shut down by floods caused by the morning's rains, prompted city and county officials to institute an overnight curfew for the entire city through next week.

The lack of power and dwindling supplies of fuel and perishable food has residents here in Houston nervously making runs across the city to scavenge and hoard for the days to come.

In addition, residents who evacuated before Ike made landfall early Saturday morning – reportedly 1 million people from all along the Gulf Coast area – have started to return to the Houston area, only to find they are unable to either reach their homes or fill their gas tanks. As the day grows warmer and more humid, some have run out of gas on the highways or been stuck on side roads.

Authorities said Saturday that more than 3 million people were left without power by the 500-mile-wide storm. Thousands more residents were feared stranded by swirling floodwaters. Authorities said they could not provide an accurate tally of the storm's damage because many roads were impassable and entire neighborhoods were cut off.

At least three deaths were listed as storm-related. Officials feared that the toll could mount, depending on the fates of people caught in areas that were supposed to be evacuated.

The storm's top tidal surge was 15 feet, well below the 20 to 25 feet predicted. But damage to homes, businesses and infrastructure was widespread, and the economic toll was considerable because the region's huge oil, natural

gas and petrochemical industries were shut down.

Preliminary industry estimates put damage at \$8 billion or more. Consumers nationwide faced rising gasoline prices, topping \$5 a gallon briefly in some areas.

"The good news is that the surge was nowhere near as large as we thought it was going to be," Gov. Rick Perry said. "But there's still plenty of damage out there."

President Bush declared a major disaster in 29 Texas counties and 10 Louisiana counties and ordered immediate federal aid.

In addition to the millions without power in Texas, 140,000 people in Louisiana lost electricity, adding to the 60,000 still without power since Hurricane Gustav struck over Labor Day.

Rep. John Culberson, a Republican who represents some of the hardest-hit areas of Houston, called the power situation "a very significant problem."

"What do you do about perishable foods?" he asked. "How do you keep milk? Eggs? What do you do when people have ventilators that require electricity, and they don't have that in their home for weeks?"

By some estimates, as many as 140,000 of the nearly 1 million residents ordered to leave low-lying areas along the coast elected to stay home and brave the storm. Angry officials said their refusal to leave endangered rescue crews now having to use high-water vehicles, boats and helicopters to find and retrieve stranded residents.

"There was a mandatory evacuation, and people didn't leave, and that is very frustrating because now we are having to deal with everybody who did not heed the order," said Steve LeBlanc, Galveston's city manager. "This is why we do it, and they had enough time to get out. It's just unfortunate that they decided to stay."

Homeland Security Secretary **Michael Chertoff** said, "When you stay behind in the face of a warning, not only do you jeopardize yourself, you put the first responders at risk as well. Now, we're going to see this play out."

Perry said the state had mounted "the largest search-and-rescue capability in the history of Texas." LeBlanc estimated that 40% of Galveston's 57,000 residents ignored the evacuation order.

More than 120 people were rescued by late afternoon, the U.S. Coast Guard reported, with search teams continuing to plow through debris-clogged floodwaters looking for others. Most rescues came on Galveston Island and the adjacent Bolivar Peninsula, Lt. Cmdr. Shawn Decker said.

"We will be doing this probably for the next week or more. We hope it doesn't turn into a recovery," said Sheriff's Sgt. Dennis Marlow in Orange County, where more than 300 people had to be rescued from flooded homes – "a drop in the bucket," the deputy said.

Perry's office said 940 people had been rescued statewide. A stranded freighter with 22 crewmen in the Gulf of Mexico made it through the storm safely and was awaiting a tugboat, the Coast Guard reported.

Among the hardest-hit areas was Galveston, where wind-whipped waves topped a protective sea wall. Homes burned unattended during the peak of the storm because firefighters could not reach them. At least 17 buildings collapsed, authorities said.

Fishing boats, pleasure boats, plywood and other debris scattered by the hurricane blocked the southbound lanes of Interstate 45 on the causeway leading in and out of Galveston. Crews worked through the day to clear the roadway.

Ike left downtown Houston a ghost town. Police barricaded streets that glistened with broken glass blasted from

office towers by Ike's Category 2 winds. Sidewalks and roadways were crisscrossed by felled trees and power lines, and debris swirled through the streets.

Fires broke out, including one that burned down a popular restaurant. Parts of the city were cut off by floodwaters, and trees and building insulation clogged storm drains.

In a neighborhood surrounding the University of Houston, residents milled along the sidewalks in a daze, soaked to the skin in bedraggled T-shirts and jeans. Some tried to drag heavy tree limbs out of the street, with little effect. Others wielded hand axes and chain saws.

A group of children played in the debris of a shattered strip mall, hopping over bubble-gum-colored piles of insulation and throwing peeled chunks of roofing like Frisbees.

At the Crestmont West Apartments, in Houston's Southside, scores of residents wandered forlornly, stepping over tree branches and twisted sections of roof. The winds blew so fiercely early Saturday morning that the roofs of at least half the structures in the neighborhood fell in or were peeled off completely.

Lydia Fletcher, 53, was left homeless after her roof collapsed at the height of the storm. She said she was in her apartment, searching for a flashlight, when "there was a rumbling, crashing sound that sounded like a war zone on the roof." Seconds later, the roof caved in.

"I screamed and ran outside," Fletcher said. "The only safe place I could think of to stay was my car."

With the city's water pressure low because of power failures, public health officials urged residents to boil tap water as a precaution or to drink bottled water.

Herminia Palacio, executive director of public health and environmental services for Harris County, whose staff had reported concern over children playing in floodwaters, warned parents of snakes and insects.

A curfew was imposed in downtown Houston and in all mandatory evacuation areas. Houston Mayor Bill White said there was no timetable yet for people to begin returning to their homes.

"These are towns without power. The phones don't work," the mayor said. "They've urged everyone to stay away until the areas are secured, and they aren't yet."

In Louisiana, Ike brought a strong storm surge and heavy flooding to areas that took a direct hit from Gustav two weeks ago.

"We have no reports of fatalities, but there has been extensive flooding in the south-central and western parts of the state," said Chris Macaluso, a spokesman for the Louisiana Office of Coastal Protection and Restoration.

He said much of the city of Houma in Terrebonne Parish, west of New Orleans, was flooded. "Terrebonne was in the eye of Gustav, but Ike had a bigger storm surge and caused much more extensive flooding," Macaluso said.

State officials also described flooding in western parishes as worse than that of Hurricane Rita in 2005, which came ashore along the border of Texas and Louisiana.

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